

AMENDED IN SENATE MAY 18, 2006

AMENDED IN SENATE APRIL 17, 2006

SENATE BILL

No. 1826

Introduced by Senator Migden

February 24, 2006

~~An act to add Chapter 6.15 (commencing with Section 25406) to Division 20 of the Health and Safety Code, relating to toxic substances. An act to amend Section 44321 of the Health and Safety Code, relating to toxic substances.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1826, as amended, Migden. ~~Hazardous substances: persistent, Air Toxics:~~ bioaccumulative toxicants.

Existing law designates the State Air Resources Board as the state entity responsible for the coordination and review of all levels of government in their efforts to control air pollution. Existing law provides that any facility that manufactures, formulates, uses, or releases any substance contained in a list compiled and maintained by the state board, as specified, must comply with the Air Toxics "Hot Spots" Information and Assessment Act of 1987.

This bill would require the state board to include in this list substances suspected by the state board of persistently bioaccumulating in humans, as specified. The bill would also contain legislative findings about the need for the state to receive information regarding the use or release of persistent, bioaccumulative toxicants.

~~Existing law regulates hazardous substances and hazardous waste.~~

~~This bill would define terms and require the Office of Environmental Health Hazard Assessment, on or before October 1, 2007, utilizing existing resources, to cause to be published a list of~~

~~those substances known as persistent, bioaccumulative toxicants, as specified. The bill would require the office to cause the list to be revised and republished at least annually thereafter. The bill would require the office, on or before January 1, 2008, to adopt a persistent, bioaccumulative toxicant report form, and would require the form to include specified information.~~

~~The bill would require, on and after March 1, 2008, a person in the course of doing business, to submit to the office electronically the form for a substance listed as a persistent, bioaccumulative toxicant. The bill would provide that the reporting requirement does not apply to a threshold level of a persistent, bioaccumulative toxicant that the office determines is de minimus for the purposes of reporting. The bill would provide that a person who violates, or threatens to violate, the reporting requirement may be enjoined by a court of competent jurisdiction, and is liable for a civil penalty not to exceed \$5,000 per day for each violation. The bill would authorize the Attorney General, a district attorney, a city attorney of a city having a population in excess of 1,000,000, or, with the consent of the district attorney, a city prosecutor in a city or city and county having a full-time city prosecutor, to bring the action, and would require a court to consider specified factors in assessing the amount of the civil penalty.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.~~

The people of the State of California do enact as follows:

1 ~~SECTION 1. Chapter 6.15 (commencing with Section 25406)~~
2 ~~is added to Division 20 of the Health and Safety Code, to read:~~

3
4 ~~CHAPTER 6.15. BIOACCUMULATIVE TOXICANTS~~

5
6 ~~25406.—~~

7 ~~SECTION 1.~~ The Legislature finds and declares all of the
8 ~~following:~~

9 ~~(a) Bioaccumulative chemicals are toxic and long-lasting~~
10 ~~substances that can build up in the food chain to levels that can~~
11 ~~be harmful to human and ecological health. These contaminants~~
12 ~~can be transported long distances in the atmosphere and can~~
13 ~~move readily from land to air and water. Because of their~~
14 ~~persistence and bioaccumulative properties, these substances do~~

1 not break down easily. Many of these substances are
2 human-made and have only been in existence for a relatively
3 short period of human history.

4 (b) Many persistent, bioaccumulative toxicants are associated
5 with a range of adverse human health effects, including effects
6 on the nervous system, reproductive and developmental
7 problems, cancer, and genetic impacts. Particular hazards may be
8 posed to a developing fetus or to young children, in whom
9 critical organs, including the central nervous system, are still
10 under development. Also, certain individuals who consume, for
11 economic or cultural reasons, large amounts of fish from local
12 waters contaminated with persistent, bioaccumulative toxicants
13 may be at a higher risk for adverse effects.

14 (c) In order to protect public health and the environment, as
15 well as to promote cleaner technologies and prevent pollution,
16 the Legislature believes that it is the public's right to know about
17 the release of persistent, bioaccumulative toxicants into their
18 homes, communities, and environment.

19 (d) For all of these reasons, it is essential that the state receive
20 information regarding the use or release of persistent,
21 bioaccumulative toxicants.

22 *SEC. 2. Section 44321 of the Health and Safety Code is*
23 *amended to read:*

24 44321. For the purposes of Section 44320, the state board
25 shall compile and maintain a list of substances that contains, but
26 is not limited to, all of the following:

27 (a) Substances identified by reference in paragraph (1) of
28 subdivision (b) of Section 6382 of the Labor Code and
29 substances placed on the list prepared by the National
30 Toxicology Program and issued by the United States Secretary of
31 Health and Human Services pursuant to paragraph (4) of
32 subsection (b) of Section 241 of Title 42 of the United States
33 Code. For the purposes of this subdivision, the state board may
34 remove from the list any substance which meets both of the
35 following criteria:

36 (1) No evidence exists that it has been detected in air.

37 (2) The substance is not manufactured or used in California,
38 or, if manufactured or used in California, because of the physical
39 or chemical characteristics of the substance or the manner in

1 which it is manufactured or used, there is no possibility that it
2 will become airborne.

3 (b) Carcinogens and reproductive toxins referenced in or
4 compiled pursuant to Section 25249.8, except those which meet
5 both of the criteria identified in subdivision (a).

6 (c) Substances designated by the state board as toxic air
7 contaminants pursuant to subdivision (b) of Section 39657 and
8 substances on the candidate list of potential toxic air
9 contaminants and the list of designated toxic air contaminants
10 prepared by the state board pursuant to Article 3 (commencing
11 with Section 39660) of Chapter 3.5 of Part 2, including, but not
12 limited to, all substances currently under review and scheduled or
13 nominated for review and substances identified and listed for
14 which health effects information is limited.

15 (d) Substances for which an information or hazard alert has
16 been issued by the repository of current data established pursuant
17 to Section 147.2 of the Labor Code.

18 (e) Substances reviewed, under review, or scheduled for
19 review as air toxics or potential air toxics by the Office of Air
20 Quality Planning and Standards of the Environmental Protection
21 Agency, including substances evaluated in all of the following
22 categories or their equivalent: preliminary health and source
23 screening, detailed assessment, intent to list, decision not to
24 regulate, listed, standard proposed, and standard promulgated.

25 (f) Any additional substances recognized by the state board as
26 presenting a chronic or acute threat to public health when present
27 in the ambient air, including, but not limited to, any
28 neurotoxins or chronic respiratory toxicants not included
29 within subdivision (a), (b), (c), (d), or (e).

30 (g) *Any additional substances suspected by the state board of*
31 *persistently bioaccumulating in humans, not otherwise included*
32 *within subdivisions (a) to (f), inclusive. In making this assessment,*
33 *the state board shall rely on the information included in the*
34 *Third National Report on Human Exposures to Environmental*
35 *Chemicals created by the Centers for Disease Control and*
36 *Prevention.*

37 ~~25406.1. For the purposes of this chapter, the following terms~~
38 ~~have the following meanings:~~

39 (a) ~~“Office” means the Office of Environmental Health Hazard~~
40 ~~Assessment.~~

1 (b) “Person in the course of doing business” does not include
2 any of the following:

3 (1) A person employing fewer than 10 employees in his or her
4 business.

5 (2) A city, county, or district, or a department or agency of a
6 city, county, or district.

7 (3) The state or a department or agency of the state.

8 (4) The federal government or a department or agency of the
9 federal government.

10 25406.2. On or before October 1, 2007, the office, utilizing
11 existing resources, shall cause to be published a list of those
12 substances known as persistent, bioaccumulative toxicants. The
13 office shall cause the list to be revised and republished in light of
14 additional knowledge at least once per year thereafter. The list
15 shall include at a minimum those substances identified by the
16 federal Centers for Disease Control and Prevention for the
17 studies known collectively as the National Report on Human
18 Exposures to Environmental Chemicals.

19 25406.3. (a) On and after March 1, 2008, a person in the
20 course of doing business shall submit to the office an electronic
21 form completed pursuant to subdivision (b) for a substance listed
22 as a persistent, bioaccumulative toxicant pursuant to Section
23 25406.2.

24 (b) On or before January 1, 2008, the office shall adopt a
25 persistent, bioaccumulative toxicant reporting form that shall be
26 submitted pursuant to subdivision (a) by a person in the course of
27 doing business. The form adopted by the office pursuant to this
28 section shall include all of the following:

29 (1) The name, location, and principal business activities, of the
30 business.

31 (2) An appropriate certification, signed by a senior official
32 with management responsibility for the person completing the
33 report, regarding the accuracy of the information provided in the
34 form.

35 (3) The submission of all of the following items of information
36 regarding the use of each listed persistent, bioaccumulative
37 toxicant that is handled, present in a process or product, or
38 otherwise released into the environment:

1 ~~(A) A description of whether the listed persistent,~~
2 ~~bioaccumulative toxicant is manufactured, processed, or~~
3 ~~otherwise used.~~

4 ~~(B) An estimate of the annual quantity of a listed persistent,~~
5 ~~bioaccumulative toxicant used.~~

6 ~~(c) The form shall allow, to the greatest extent feasible,~~
7 ~~reporting based on readily available data, or, if that data is not~~
8 ~~readily available, reasonable estimates of the amounts of listed~~
9 ~~persistent, bioaccumulative toxicants.~~

10 ~~(d) The office shall require that the data in the form be~~
11 ~~expressed in common units to assure consistency.~~

12 ~~(e) The office may establish a threshold quantity for reporting~~
13 ~~a listed persistent, bioaccumulative toxicant.~~

14 ~~25406.4. (a) A person who violates or threatens to violate~~
15 ~~Section 25406.3 may be enjoined in a court of competent~~
16 ~~jurisdiction.~~

17 ~~(b) (1) A person who violates Section 25406.3 is liable for a~~
18 ~~civil penalty not to exceed five thousand dollars (\$5,000) per day~~
19 ~~for each violation in addition to any other penalty established by~~
20 ~~law. That civil penalty may be assessed and recovered in a civil~~
21 ~~action brought in a court of competent jurisdiction.~~

22 ~~(2) In assessing the amount of a civil penalty for a violation of~~
23 ~~Section 25406.3, the court shall consider all of the following:~~

24 ~~(A) The nature and extent of the violation.~~

25 ~~(B) The number and severity of the violations.~~

26 ~~(C) The economic effect of the penalty on the violator.~~

27 ~~(D) Whether the violator took good faith measures to comply~~
28 ~~with this chapter and the time these measures were taken.~~

29 ~~(E) The willfulness of the violator's misconduct.~~

30 ~~(F) The deterrent effect that the imposition of the penalty~~
31 ~~would have on both the violator and the regulated community as~~
32 ~~a whole.~~

33 ~~(G) Any other factor that justice may require.~~

34 ~~(c) An action pursuant to this section may be brought by the~~
35 ~~Attorney General in the name of the people of the State of~~
36 ~~California, by a district attorney, by a city attorney of a city~~
37 ~~having a population in excess of 1,000,000, or, with the consent~~
38 ~~of the district attorney, by a city prosecutor in a city or city and~~
39 ~~county having a full-time city prosecutor.~~

1 ~~25406.5. Section 25406.3 does not apply to a threshold level~~
2 ~~of a persistent, bioaccumulative toxicant that the office~~
3 ~~determines is de minimus for the purposes of reporting.~~

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